Filed 11/30/16 McCarron v. McCarron CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MICHAEL MCCARRON, Plaintiff and Appellant, v. DOUGLAS MCCARRON et al., Defendants and Appellants.	B262112 (Los Angeles County Super. Ct. No. BC556967)

APPEALS from an order and a judgment of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed in part and reversed in part.

DeCarlo & Shanley, John T. DeCarlo, Daniel M. Shanley, Patrick A. Maher, Yuliya S. Mirzoyan for Defendants and Appellants.

Michael McCarron, in pro. per.; Schreiber & Schreiber, Eric Schreiber for Plaintiff and Appellant.

The United Brotherhood of Carpenters and Joiners of America (Carpenters or the union) expelled Michael McCarron (plaintiff), one of its leaders, after a disciplinary hearing in which the union found him guilty of malfeasance. Plaintiff then sued the union and several of its officers under state law and the Labor Management Reporting and Disclosure Act of 1959, title 29 United States Code section 501 (LMRDA), alleging defendants failed to afford him a fair disciplinary hearing and defamed him in connection with the disciplinary proceedings. Defendants specially moved to strike the complaint pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP statute, on the grounds that plaintiff's allegations arose from the union's public statements made in connection with an issue of public interest, and plaintiff had no reasonable probability of prevailing.[1] The trial court granted the motion in part, striking allegations relating to defamation but preserving those relating to the fairness of the union's disciplinary proceedings. Defendants appeal, contending the court should have stricken the entire complaint. Plaintiff cross-appeals, contending the court should have denied the special motion to strike. Plaintiff also contends the court erred in awarding attorney fees to defendants because no cause of action was ordered stricken in its entirety.

We conclude plaintiff's claims fall within the purview of the anti-SLAPP statute, but he failed to establish a reasonable probability of prevailing on the merits. Therefore, we affirm the trial court's order in part and reverse in part.

---

[1] Further statutory references are to the Code of Civil Procedure unless otherwise indicated.

BACKGROUND

Douglas McCarron (McCarron) is the General President of Carpenters, an international trade union with hundreds of thousands of members in North America. Carpenters is divided into regional councils, one being the Southwest Regional Council of Carpenters (SWRCC), which has tens of thousands of members across six western states. Dan MacDonald, Douglas Banes, Michael Draper, Robert Phil Newkirk, and Justin Weidner are union officials with either Carpenters or SWRCC or both.

Plaintiff, McCarron's brother, was the SWRCC's Executive Secretary-Treasurer, its highest officer.

In 2013, Draper, on behalf of Carpenters, filed charges against plaintiff under section 14D of the union's constitution (the 14D charges), alleging breach of fiduciary duty and financial malfeasance concerning execution of his responsibilities as head of SWRCC. Carpenters held a trial on the 14D charges from September 9 to 12, 2013 (the 14D trial), during which a union trial committee accepted evidence and heard testimony from witnesses. At the end of trial, the committee found plaintiff had committed malfeasance, and it ordered him expelled from the union.

On October 16, 2013, Carpenters held a supervision hearing regarding SWRCC, after which SWRCC was placed under a trusteeship.

In April 2014, SWRCC sued plaintiff in federal court for breach of fiduciary duty and breach of contract. Plaintiff counter-claimed against only SWRCC for slander, defamation, conspiracy, unfair competition under Business and Professions Code section 17200 et seq., retaliation under the LMRDA, violations of the Racketeer Influenced Corrupt Organizations Act (18 U.S.C. § 1962; RICO), violation of his due process and free speech rights under the LMRDA, and abuse of process. He alleged various members of

Carpenters and SWRCC made oral and written defamatory statements about him in connection with the 14D trial.

On December 23, 2014, the district court dismissed many of plaintiff's counter-claims on the ground that SWRCC as an entity could not commit the offenses alleged.

I. Complaint

On September 9, 2014, plaintiff filed the instant action in the Los Angeles Superior Court, asserting the same causes of action for defamation, conspiracy, unfair competition, violation of the LMRDA, RICO violations, and abuse of process.[2]

In his defamation claims, plaintiff alleged McCarron, MacDonald, Banes, Draper, Newkirk, and Weidner widely communicated to union members orally and in writing that he was corrupt and mendacious, that he exhibited "irrational, erratic and threatening behavior" and made a practice of "intimidation and threats of violence" backed by "ties to gangland murderers," that he was mentally deteriorating, and that he had misappropriated millions of dollars in union funds. He alleged McCarron and the other union leaders conspired to publish these communications because he and McCarron had had a falling out in 2013 after their mother's death, as a result of which McCarron sought to ruin his reputation and oust him from the union.

The LMRDA contains a "Bill of Rights" that guarantees members of labor organizations equal protection rights, freedom of speech, and due process, and provides for a private right of action to redress violation of those rights. (29 U.S.C. §§ 411, 412.) In his LMRDA claims, plaintiff alleged

---

[2] Plaintiff also asserted a cause of action against Union Labor Life Insurance Company (ULLICO), his insurer, for bad faith denial of insurance. ULLICO is not party to this appeal.

defendants concealed evidence from the union committee at the 14D trial, coerced a witness not to testify on his behalf, and denied plaintiff representation at the trial by refusing to allow his daughter, an attorney, to represent him. Plaintiff further alleged defendants failed to consider evidence that would have exonerated him at the 14D trial, held the trial in Las Vegas to discourage his witnesses from appearing, passed a special rule subjecting him to unfair cross-examination, and forbade him from making copies of evidence necessary for his defense.

II. Anti-SLAPP Motion

Defendants specially moved to strike the complaint pursuant to section 425.16, arguing the gravamen of every cause of action was defamation, on which plaintiff could not prevail because their communications were privileged.

Plaintiff opposed the anti-SLAPP motion, arguing the gravamen of the complaint did not arise from defendants' acts in furtherance of any right to free speech on a public issue, and he would likely prevail because defendants' communications were not privileged. In support of his opposition, plaintiff declared defendants made the communications outlined above, which were false. He declared, "This whole matter boils down to a fratricidal spat between brothers . . . . I complained that I was against [McCarron] hiring [McCarron's] girlfriend, . . . that I was against [him] giving [her] a $66,000 raise, and I refused to support [his] bid for another term as president in 2015. Our mom passed away on 5/22/13 and, at the funeral, the brothers became engaged in an argument and [McCarron] said to me: 'Is that the way you want it, then you're done.' I understood [his] words clearly: [He] was going to oust me from the SWRCC." Plaintiff declared the statements were "defamatory," "libelous," "slanderous" and "false" "lies."

The trial court found defendants' allegedly defamatory statements fell within the protections of the anti-SLAPP statute, but the alleged witness tampering and disciplinary activity did not. The court found that the LMRDA extended a privilege to statements made in the context of a labor dispute unless they are published with actual malice, but (1) sustained defendants' objections to almost all of plaintiff's evidence and (2) found that plaintiff had presented no evidence of actual malice. Accordingly, the court ordered all causes of action stricken to the extent they depended on allegations of defamation, but preserved the causes of action to the extent they depended on allegations of witness tampering or violation of the LMRDA.

Both sides appealed.

After the parties filed their briefs, we requested supplemental briefing on whether plaintiff's LMRDA claims are subject to exclusive federal jurisdiction. Both sides responded with letter briefs. Also after briefing, defendants sought judicial notice of several outside documents purportedly evidencing facts that disproved plaintiff's claims, as well as a disposition in the federal lawsuit that occurred after the trial court ruled on defendant's anti-SLAPP motion. The request is denied because the matter of which defendants seek judicial notice is improper or irrelevant to this appeal. Plaintiff himself sought judicial notice of U.S. Department of Labor findings vindicating some of his actions as head of the SWRCC. The request is denied because the findings are irrelevant to this appeal.

DISCUSSION

I. Legal Principles and Standard of Review

Section 425.16 provides, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or

free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

A "special motion to strike under section 425.16 involves a two-step process. First, the moving defendant must make a prima facie showing 'that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue," as defined in the statute.' [Citation.] If the defendant makes this initial showing of protected activity, the burden shifts to the plaintiff at the second step to establish a probability it will prevail on the claim. [Citation.] The plaintiff need only state and substantiate a legally sufficient claim. [Citation.] The plaintiff's evidence is accepted as true; the defendant's evidence is evaluated to determine if it defeats the plaintiff's showing as a matter of law." (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 420.)

As used in section 425.16, "'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the

constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).) "[C]ourts determining whether conduct is protected under the anti-SLAPP statute look not to First Amendment law, but to the statutory definitions in section 425.16, subdivision (e)." (*City of Montebello v. Vasquez*, *supra*, 1 Cal.5th at p. 422.)

However, "section 425.16 cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law and, for that reason, not protected by constitutional guarantees of free speech and petition." (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 317.) Section 425.16 expressly protects only valid speech and petitioning activity. (*Flatley v. Mauro*, *supra*, 39 Cal.4th at p. 317.)

We review the trial court's ruling de novo (*Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 988), using a two-prong approach (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67). We determine first whether the moving party has made a threshold showing that the challenged cause of action arises from protected activity. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) If the moving party meets this burden, we determine whether the opposing party has established a probability of prevailing on the claim. (*Id.* at p. 88.) "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." (*Id.* at p. 89.)

In determining whether the threshold "arising from" requirement is met, we look for "the *principal thrust or gravamen* of the plaintiff's cause of action." (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188.) "Although a party's litigation-related activities constitute 'act[s] in

furtherance of a person's right of petition or free speech,' it does not follow that any claims associated with those activities are subject to the anti-SLAPP statute. To qualify for anti-SLAPP protection, the moving party must demonstrate the claim 'arises from' those activities. A claim 'arises from' an act when the act ""forms the basis for the plaintiff's cause of action' . . . ."" [Citation.] '[T]he "arising from" requirement is not always easily met.' [Citation.] A cause of action may be 'triggered by' or associated with a protected act, but it does not necessarily mean the cause of action *arises* from that act." (*Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1537.) Thus, the "anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." (*Navallier v. Sletten*, *supra*, 29 Cal.4th at p. 92.)

II. First Prong

A. Defamation Claims

In his first and second causes of action, plaintiff alleges defendants made slanderous and libelous statements on September 9, 10, 11, 12 and 20, 2013, October 16, 2013, and April 14, 2014, in connection with the 14D trial, the supervision hearing, and the subsequent SWRCC lawsuit. We conclude all the statements, including those made to the witness, pertain to a public issue and fall within the ambit of the anti-SLAPP statute.

Statements pertain to a "public issue" when they concern either a person or entity in the public eye or conduct "that could directly affect a large number of people beyond the direct participants." (*Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924.) A public figure is an individual who has been thrust

or drawn into a particular public controversy "'influence the resolution of the issues involved.'" (*Stolz v. KSFM 102 FM* (1994) 30 Cal.App.4th 195, 203.) "Public interest" within the meaning of the anti-SLAPP statute "has been broadly construed to include private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 737.) "Although matters of public interest include legislative and governmental activities, they may also include activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals." (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 650, overruled on another ground by *Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, 29 Cal.4th at p. 68, fn. 5.) For example, in *Hailstone v. Martinez*, *supra*, 169 Cal.App.4th at page 738, the court concluded defamatory statements relating to an investigation into the possibly illegal actions of an executive board member representing a union of over 10,000 members concerned a public figure and a matter of public interest.

We easily conclude plaintiff, as head of SWRCC, which represents tens of thousands of members, is a public figure, and defendants' statements that he was unqualified for the position and breached significant duties concerned matters of public interest.

The trial court found MacDonald's statements to a witness before the 14D trial were not protected by section 425.16 because they constituted witness tampering within the meaning of Penal Code section 136.1. We disagree. Penal Code section 136.1 makes it a misdemeanor to "[k]nowingly and maliciously prevent[] or dissuade[] any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law."

(Pen. Code, § 136.1, subd. (a)(1).) Here, the 14D hearing was authorized not by law but by Carpenter's bylaws. No authority of which we are aware criminalizes dissuading a witness from participating in a union's internal disciplinary hearing.

B. LMRDA Claims

"'The LMRDA of 1959 was designed to protect the rights of union members to discuss freely and criticize the management of their unions and the conduct of their officers. The legislative history and the extensive hearings which preceded the enactment of the statute abundantly evidence the intention of the Congress to prevent union officials from using their disciplinary powers to silence criticism and punish those who dare to question and complain.'" (*Warren v. Herndon* (1981) 115 Cal.App.3d 141, 147.) The LMRDA grants union members "equal rights and privileges" of participation in union business, "[f]reedom of speech and assembly" in union meetings, and "[s]afeguards against improper disciplinary action." (29 U.S.C. § 411.) It provides that "[n]o member of any labor organization may be fined, suspended, expelled, or otherwise disciplined . . . by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing." (29 U.S.C. § 411(a)(5).)

In his LMRDA causes of action, plaintiff alleges defendants violated his rights under the act in conducting an unfair 14D trial and supervision hearing by denying him access to witnesses and evidence, denying his choice of counsel, and subjecting him to unfair cross-examination.

Section 425.16 protects statements made either in a public place on an issue of public interest or in connection with official proceedings, or "any other conduct in furtherance of the exercise of the constitutional right of

petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).) The union's conduct of its disciplinary hearings did not itself constitute speech, but to "be protected by the anti-SLAPP statute, the conduct . . . does not have to constitute free speech. Rather, the conduct need only help to advance or assist a person in the exercise of his or her free speech rights." (*Collier v. Harris* (2015) 240 Cal.App.4th 41, 46; see *Kolar v. Donahue, McIntosh & Hammerton*, *supra*, 145 Cal.App.4th at p. 1537 [litigation-related activities constitute acts in furtherance of the right of petition or free speech].)

In evaluating whether the conduct of which plaintiff complains occurred in a public forum in connection with an issue of public interest, we discern no material difference between defendants' communications that plaintiff was unqualified to be a union member and its findings to that effect. Because the procedure by which the union reached those findings helped to advance or assist in the exercise of its petition rights, it is entitled to protection under section 425.16.

III. Second Prong

Once defendants established the gravamen of the complaint concerned protected activity, the burden shifted to plaintiff to demonstrate a probability of prevailing on his claims. To do so, he must demonstrate that his complaint was "'both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.'" (*Soukup*, *supra*, 39 Cal.4th at p. 291.) The trial court must deny an anti-SLAPP motion if "'"the plaintiff presents evidence establishing a prima facie case which, if believed by the trier of fact, will result in a judgment for the plaintiff."'" (*Robinzine v. Vicory* (2006) 143 Cal.App.4th 1416, 1421.) At this stage of the proceedings, the plaintiff "need

only establish that his or her claim has 'minimal merit' [citation] . . . ." (*Soukup*, *supra*, 39 Cal.4th at p. 291.) Although "'the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim.'" (*Ibid.*)

A. Defamation Claims

"The tort of defamation 'involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.'" (*Taus v. Loftus* (2007) 40 Cal.4th 683, 720.) Statements made at the 14D trial were subject to the so-called common-interest privilege established by Civil Code section 47, subdivision (c)(1), which provides in relevant part: "'A privileged publication or broadcast is one made: [¶] . . . [¶] (c) In a communication, without malice, to a person interested therein, (1) by one who is also interested . . . .'" Plaintiff thus "bore the burden of establishing a prima facie case that these statements were made with "'[a]ctual malice.'"" (*Taus*, *supra*, at p. 721.) "'The malice necessary to defeat a qualified privilege . . . is established by a showing that the publication was motivated by hatred or ill will towards the plaintiff *or* by a showing that the defendant lacked reasonable grounds for belief in the truth of the publication and therefore acted in reckless disregard of the plaintiff's rights (citations).'" (*Sanborn v. Chronicle Publishing Co.* (1976) 18 Cal.3d 406, 413.)

In opposition to defendants' anti-SLAPP motion, plaintiff relied solely on the declarations of himself and his attorney, an unauthenticated transcript of a telephone conversation, a snippet of an unauthenticated transcript of the 14D trial proceedings, an Internet article describing the

proceedings, and exhibits setting forth union bylaws, meeting minutes, and communications with plaintiff. The declarations basically restated allegations in the complaint. For example, plaintiff and his attorney both declared that defendants stated to union members on several occasions, orally and in writing, that he was corrupt. Plaintiff declared MacDonald stated at an August 16, 2013 meeting that plaintiff was mentally unstable. And he declared that in September 2013, Draper handed out a "libelous" letter to witnesses at the 14D trial and later mailed it to 65,000 union members. Plaintiff's attorney declared that Draper stated during an October 2013 meeting that plaintiff lied to and stole from the union.

However, neither plaintiff nor his attorney explained how they knew any of the statements in their declarations were true. Neither represented they received any letter, witnessed any speech, or attended any meeting where plaintiff was defamed, and they identified no witness nor writing and offered no foundation for the purported transcripts. Defendants objected to nearly every material statement in both declarations, and the trial court sustained almost all of the objections on the grounds that the statements lacked foundation, were not based on personal knowledge, or constituted hearsay. Plaintiff does not challenge those rulings on appeal.

Instead of affirmatively tackling the trial court's evidentiary rulings, plaintiff simply asserts, without explanation, that to the extent it survived objections, his evidence demonstrates a probability prevailing on the merits. But he identifies no such evidence, and our own close review of plaintiff's evidence reveals only four surviving, material statements as follows: "The entire [14D] trial [presented false] allegations of reverse engineering . . . leases, purchasing 'luxury' Suburbans, and not turning in expense receipts"; (2) "Justin Weidner testified [at the 14D trial] that [plaintiff] was exhibiting

irrational behavior, was unable to focus, and [*sic*] spoke of [his] deteriorating mental capabilities"; (3) "Douglas McCarron called [plaintiff] a liar several times on video [at a September 20, 2013 meeting of all members of Local 1506]"; and "This whole matter boils down to a fratricidal spat between brothers . . . . Douglas was going to oust me from the SWRCC." These statements fail to make the required evidentiary showing of probable success on the merits.

But plaintiff presented no evidence that Weidner or anyone else who presented evidence at the 14D trial were motivated by hatred or ill will or lacked reasonable grounds for belief in the truth of their publications. Although he declared Douglas McCarron bore him hatred or ill will, plaintiff offers no evidence demonstrating his personal knowledge that other defendants shared in the sentiment.

Plaintiff declared that Douglas McCarron called him a "liar" several times on video shown at a September 20, 2013, Local 1506 meeting, but he offered no evidence establishing that McCarron authorized showing the video or that his statements had a natural tendency to injure plaintiff or caused any special damage. For example, there is no evidence, and plaintiff does not argue, that the members of Local 1506 had or exercised any decisionmaking ability respecting his position in the union or responded to the video in any way, negative or positive.

We conclude that plaintiff failed to establish a prima facie case on his defamation claims.

B. LMRDA Claims

Plaintiff's LMRDA claims are legally insufficient because the superior court has no jurisdiction over them.

As noted above, the LMRDA provides a private right of action for a union member aggrieved by violation of his due process rights. (29 U.S.C. §§ 411, 412.) However, title 29 United States Code section 412 provides that "[a]ny person whose rights secured by the provisions of this title . . . have been infringed by any violation of this title . . . may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization *shall be brought in the district court of the United States* for the district where the alleged violation occurred, or where the principal office of such labor organization is located." (Italics added.)

This mandatory directive to file in the district court vests exclusive jurisdiction over LMRDA claims in the federal court. (*Crocco v. Local 333, United Marine Div*. (N.D.N.Y. 1985) 612 F.Supp. 1072, 1076; *Safe Workers' Org. v. Ballinger* (S.D. Ohio 1974) 389 F.Supp. 903, 910; *Thorp v. Serraglio* (N.D. Ohio 1978) 464 F.Supp. 149, 151.) Therefore, no reasonable probability exists that plaintiff will prevail the LMRDA claims in state court.

C. Conspiracy and Abuse of Process

Plaintiff's causes of action for conspiracy and abuse of process are also legally insufficient. Plaintiff's cause of action for "conspiracy" fails because "[c]onspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration." (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511; accord *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 845 ["conspiracy to commit a tort is not a separate cause of action from the tort itself"].)

Plaintiff's cause of action for abuse of process also fails. "The common law tort of abuse of process arises when one uses the court's process for a purpose other than that for which the process was designed. [Citations.] It has been 'interpreted broadly to encompass the entire range of "procedures" incident to litigation.' [Citation.] [¶] '[T]he essence of the tort [is] . . . misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice.' [Citation.] To succeed in an action for abuse of process, a litigant must establish that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings." (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056-1057.)

Here, plaintiff does not allege defendants misused the power of any court; he alleges they misused the union's disciplinary powers. No authority of which we are aware extends the tort of abuse of process to private disciplinary proceedings.

D. Unfair Competition and RICO

Plaintiff's fourth and sixth causes of action, respectively for unfair competition in violation of Business and Professions Code section 17200, et seq., and for RICO violations, depend both on plaintiff's defamation claims and his LMRDA claims. To the extent they depend on the former, they survive with those claims as discussed above. To the extent they depend on the latter, they are authorized by title 29 United States Code section 413, which provides: "Nothing contained in this title [29 USCS §§ 411 et seq.] shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal . . . ." Both are therefore legally sufficient.

DISPOSITION

The order denying in part and granting in part defendants' special motion to strike under section 425.16 is reversed in part. The matter is remanded to the trial court with directions to grant the motion in its entirety. Each side is to bear its own costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.